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IN THE
SUPREME COURT OF THE UNITED STATES

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CHARLES ELMORE GROPLEY
CLERK

October Term, 1944.

No. **1012**

HONORABLE PEIRSON M. HALL,
Judge of the United States
District Court for the
Southern District of
California,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
AND BRIEF IN SUPPORT THEREOF

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Instructions to United States Attorneys, etc.
(1929) §§ 985-987, §§ 1115-1117.

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1 IN THE
2 SUPREME COURT OF THE UNITED STATES
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4 October Term, 1944.

5 No. _____
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7
8 HONORABLE PEIRSON M. HALL,
9 Judge of the United States
10 District Court for the
11 Southern District of
12 California,

13 Petitioner,

14 vs.

15 UNITED STATES OF AMERICA,

16 Respondent.
17

18
19 PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
20 CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.
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22
23 TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
24 OF THE SUPREME COURT OF THE UNITED STATES:

25 Comes now Peirson M. Hall, Judge
26 of the United States District Court for the Southern
27 District of California, appearing by the undersigned
28 counsel appointed as a special committee for such

1 purpose by the Los Angeles Bar Association, and respect-
2 fully petitions that a writ of certiorari issue to review
3 the final judgment of the United States Circuit Court of
4 Appeals for the Ninth Circuit in that certain cause en-
5 titled "United States of America, Petitioner, v. Honorable
6 Peirson M. Hall, Judge of the United States District Court
7 for the Southern District of California, Respondent," and
8 numbered 10736 in the records of said Circuit Court of
9 Appeals.

10
11 A. THE OPINIONS OF THE COURTS BELOW.

12 The opinion of the United States Circuit Court of
13 Appeals for the Ninth Circuit was filed November 25, 1944,
14 and is reported at 145 F. (2d) 781. It is also set forth
15 at R. 91-98 and in Appendix A attached at the end of the
16 brief appended hereto.

17 The hearing in the United States Circuit Court of
18 Appeals for the Ninth Circuit followed a petition by the
19 United States of America, the respondent here, for a writ
20 of mandamus directing the petitioner here, as United States
21 District Judge, "(1) to recognize the authority of the
22 Attorney General to assign to Mr. Irl D. Brett and/or mem-
23 bers of his staff, independently of the United States
24 Attorney's office, condemnation matters arising in the
25 Southern District of California, and more particularly the
26 proceeding entitled United States v. 1.960 Acres of Land

1 in Riverside County, California, No. 2567-PH; (2) to
2 recognize the authority of Mr. Irl D. Brett and/or his
3 assistants to represent the United States in such proceed-
4 ings; and (3) to accept and assume jurisdiction over all
5 pleadings and motions which Mr. Irl D. Brett and/or his
6 assistants may file on behalf of the United States in
7 condemnation proceedings brought or pending in Judge Hall's
8 court." (R. 94.)

9 The Circuit Court of Appeals thereafter ordered a
10 writ of mandamus to issue in accordance with its opinion
11 (R. 91-98), and denied a rehearing on December 30, 1944
12 (R. 99).

13 The decision of the District Court, referred to
14 in the opinion of the Circuit Court of Appeals (R. 98),
15 is reported at 54 F. Supp. 867 (D.C.S.D.Cal. 1944).
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1 B. SUMMARY STATEMENT OF THE MATTER INVOLVED.

2 A statement of the case is set forth in the
3 opinion of the Circuit Court of Appeals, reported in
4 145 F. (2d) at pages 782-783, and in Appendix A hereto
5 attached; and petitioner requests leave, in the interest
6 of brevity, to incorporate that portion of the opinion of
7 the Circuit Court of Appeals by reference here, to serve
8 as a summary statement of the matter involved (R. 91-94).
9

0 C. JURISDICTIONAL STATEMENT.

1 The jurisdiction of this Honorable Court to review
2 the cause by writ of certiorari is invoked under Section
3 240(a) of the Judicial Code as amended by the Act of
4 February 13, 1925, Chapter 229, Section 1; 43 Stat. 938;
5 28 U.S.C.A. § 347(a).
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1 D. QUESTIONS PRESENTED FOR REVIEW.

2 The following questions are presented for review
3 in this cause:

4 (1) Does the Attorney General have the power to
5 circumvent or disestablish the office of the United States
6 District Attorney in any district by opening a branch
7 office of the Department of Justice in such district?
8 (R. 91-92.)

9 (2) Does the Attorney General have the power
10 "to assign to Mr. Irl D. Brett (a special assistant to
11 the Attorney General) and/or members of his staff,
12 independently of the United States Attorney's office,
13 condemnation matters arising in the Southern District of
14 California?" (R. 94.)

15 (3) Does a special assistant to the Attorney
16 General have the power to stipulate for the entry of a
17 money judgment against the United States in a condemna-
18 tion case? (R. 93-94.)
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E. REASONS FOR GRANTING THE WRIT.

The writ prayed for should be allowed for the following reasons:

(1) The Circuit Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

This question is whether the Attorney General of the United States has the power to open a branch office in any district and thus circumvent or disestablish, wholly or in part, the office of United States District Attorney as the law office for the United States in such district. The question is one of great importance in the administration of justice and in the proper functioning of the legal officers who represent the Government. The interrelation of the Department of Justice and the office of United States District Attorney under the Act of September 24, 1789 (1 Stat. 92, c. 20, § 35; R.S. § 771; 28 U.S.C.A. § 485) the Act of March 2, 1889 (25 Stat. 941, c. 411, § 1; 40 U.S.C.A. § 256), and the Act of June 30, 1906 (34 Stat. 816, c. 3935; 5 U.S.C.A. § 310) should be settled by this Court.

(2) The Circuit Court of Appeals for the Ninth Circuit has, secondly, decided an important question of federal law which has not been, but should be, settled by this Court; namely, whether the Attorney General of the United States has the power to assign the prosecution of condemnation cases to one of his special assistants and the

latter's staff of special attorneys, to be handled independ-
ently of the office of United States District Attorney in
the Southern District of California, or in any other
district. This question is likewise one of importance in
the conduct of federal litigation and should be settled by
this Court. Statutes involved in the determination of this
question are the Act of September 24, 1789 (1 Stat. 92,
c. 20, §35; R.S. §771; 28 U.S.C.A. §485), the Act of March 2,
1889 (25 Stat. 941, c. 411, §1; 40 U.S.C.A. §256), and the
Act of June 30, 1906 (34 Stat. 816, c. 3935; 5 U.S.C.A.
§310).

(3) The Circuit Court of Appeals for the Ninth
Circuit has, thirdly, decided an important question of
federal law which has not been, but should be, settled by
this Court; namely, whether a special assistant to the
Attorney General may stipulate to a money judgment against
the United States in condemnation cases. The question is one
of considerable importance in view of the widespread prac-
tice illustrated by the facts in the case at bar. Statutes
involved in the consideration of this question are the Act
of February 26, 1931 (46 Stat. 1421, c. 307, §1; 40 U.S.C.A.
258a), and the Act of October 21, 1942 (56 Stat. 797, c. 618;
40 U.S.C.A. §258f).

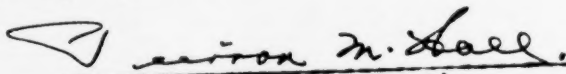
(4) The decision of the Circuit Court of Appeals in
the instant case is in conflict with the decision of the
United States Court of Appeals for the District of Columbia

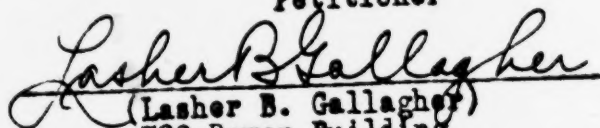
1 in Moody v. Wickard, 136 F. (2d) 801 (1943), cert. denied
2 320 U. S. 375, 64 S. Ct. 89, 88 L. ed. (Adv. Ops.) 46
3 (1943).

4 In Moody v. Wickard, supra, the court held that an
5 officer of the United States has no power to stipulate or
6 otherwise to consent to the entry of a money judgment
7 against the Government in a condemnation case. Contrariwise,
8 the opinion of the Circuit Court of Appeals in the case at
9 bar in effect orders petitioner, as United States District
0 Judge, to accept a stipulation for a money judgment signed
1 by a special assistant to the Attorney General (R. 94).
2 Since this practice is in apparent conflict with the rule
3 stated in Moody v. Wickard, supra, this Court should resolve
4 the uncertainty thus existing in this highly active field.
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WHEREFORE, your petitioner, Peirson M. Hall,
Judge of the United States District Court for the
Southern District of California, respectfully prays that
a writ of certiorari be issued out of and under the seal
of this Honorable Court, directed to the United States
Circuit Court of Appeals for the Ninth Circuit, commanding
that court to certify and send to this Court for its review
and determination, on a day certain to be named therein,
a full and complete transcript of the record and all
proceedings in the case numbered 10736 and entitled on its
docket "United States of America, Petitioner, v. Honorable
Peirson M. Hall, Judge of the United States District Court
for the Southern District of California, Respondent"; that
the said judgment of the said Circuit Court of Appeals may
be reversed by this Court, and that your petitioner may
have such other and further relief in the premises as to
this Honorable Court may seem meet and just; and your
petitioner will ever pray.

Dated: February 27, 1945.


(Peirson M. Hall)
Judge of the United States
District Court for the
Southern District of California.

Petitioner

(Lasher B. Gallagher)
720 Rowan Building
Los Angeles 13, California.

William C. Mathes
(William C. Mathes)
458 South Spring Street
Los Angeles 13, California.

Gordon F. Hampton
of Counsel.

Counsel for the Petitioner,
appointed as a special committee
for such purpose by the Los Angeles
Bar Association.

CERTIFICATE OF COUNSEL

We, and each of us, hereby certify that in our
opinion the foregoing petition is well founded; that it
is not interposed for delay and that the case is one in
which the prayer of the petitioner should be granted by
this Honorable Court.

Lasher B. Gallagher
(Lasher B. Gallagher)

William C. Mathes
(William C. Mathes)

Counsel for Petitioner.

THE UNITED STATES OF AMERICA }
SOUTHERN DISTRICT OF CALIFORNIA } SS.
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA }

PEIRSON M. HALL, being first duly sworn, deposes
and says: That he is the petitioner herein; that he has
read the foregoing petition, and that the same is true of
his own knowledge, except as to the matters therein stated
on information and belief, and that as to those matters,
he believes them to be true.

Peirson M. Hall

Subscribed and sworn to before me

this 27th day of February, 1945.

William A. Castro
Notary Public in and for the
County of Los Angeles,
State of California.

